

## DECLARATION FOR BCS 03-3056 US

### DECLARATION UNDER 37 CFR 1.132

I, Andreas Guenther, of Kuckelbergweg 3a, 51069 Cologne, Germany, declare as follows:

1. I studied at the University of, Hannover Germany, where I obtained a degree of doctor rer. nat. in chemistry. Since September 1, 1980 I have been employed by Bayer AG, Leverkusen, Germany, and remain employed in the process department IOP-IND with Bayer CropScience AG in Dormagen, Germany. I specialize in the field of process chemistry .
2. I am an inventor of, and I am familiar with the subject matter disclosed in United States patent application no. 10/568,355.
3. The following experiments A and B were carried out under my supervision and direction:

#### Test description:

##### **A. Comparative example 1** (corresponding to example 1 of US 5,391,811, Boehm et al. ("D2")):

195 g of diethyl chloromalonate were dissolved in 500 ml of acetonitrile, and 320 g of the addition product of 3 mol of hydrogen fluoride and 1 mol of triethylamine were added in the absence of moisture. 100 g of triethylamine were then added and the mixture was stirred at an internal temperature of 80°C for 72 hours. During this reaction time the concentration of the diethyl chloromalonate in the reaction mixture was analyzed.

##### **B. Present invention** (corresponding to example 1 of United States patent application no. 10/568,355):

137 g (0.85 mol) triethylamine-trishydrofluoride are prepared. 86 g (0,85 mol) triethylamine are added at 80°C. Next 195 g (1 mol) diethyl  $\alpha$ -chloromalonate are added over 2 hours at 80°C. Stirring is continued for 15

hours at reflux (105 to 110°C) under normal pressure.

During this reaction time the concentration of the diethyl chloromalonate in the reaction mixture was analyzed.

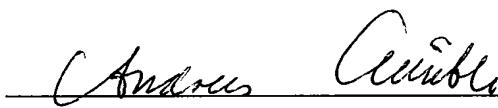
4. The following Table compares the concentration of the diethyl chloromalonate remaining in the reaction mixture over the reaction time of the experiments A and B. In the Table, "rest CME" stands for chloro malonic ethyl ester remaining in the reaction mixture.

reaction time	rest CME in comparative ex. 1	rest CME in present invention
3 h	87 %	46 %
6 h	75 %	23 %
9 h	64 %	10 %
12 h	54 %	4 %
15 h	45 %	2 %
30 h	22 %	---
45 h	10 %	---
72 h	2 %	---

5. The data in the Table shows that the observed reaction time is shorter and that the conversion rate is higher after 15 hours reaction time for the present invention in comparison to that disclosed in D2.

6. The undersigned declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing therefrom.

Signed at Dormagen, this 22th day of December, 2008.

  
Andreas Guenther